

U.S. Application Serial No: 10/622,299
Amendment dated August 21, 2006
In response to Final Office Action dated June 19, 2006

REMARKS

Claims 1 to 31 are in this application.

Claims 2 to 4, 15 to 20, and 30 to 31 have been cancelled.

Claims 1 and 14 have been amended.

Claims 1, 5 to 14, and 21 to 29 are currently pending in this application.

Claim 1 has been amended to incorporate the contents of claim 31 into claim 1. Claim 1, as amended, reads:

1. A composition for topical application to the skin comprising:
a pearlescent component having a bismuth oxychloride-containing pearlescent ingredient wherein said pearlescent component is matched to a natural skin tone benchmark shade;
a pigment component that is separately shade-matched to said benchmark shade; and
a cosmetic carrier;
wherein said pearlescent component and said pigment component form a blend present in an amount of about 0.01 wt% to about 50 wt% based on the total weight of the composition, and wherein a colored pigment is bonded to said

U.S. Application Serial No: 10/622,299

Amendment dated August 21, 2006

In response to Final Office Action dated June 19, 2006

bismuth oxychloride in said pearlescent component.

Claim 14 has been amended to incorporate the contents of claim 30 into claim 14. Claim 14, as amended, reads:

"14. A method for preparing a cosmetic composition for topical application to the skin comprising:

shade-matching a pearlescent component having a bismuth oxychloride-containing pearlescent ingredient to a natural skin tone benchmark shade to form a shade-matched pearlescent component;

shade-matching a pigment component to the benchmark shade to form a shade-matched pigment component;

blending said shade-matched pearlescent component and said shade-matched pigment component to form a shade-matched blend; and

adding said shade-matched blend to a cosmetic carrier to form a cosmetic composition;

wherein said shade-matched blend is present in an amount of about 0.01 wt% to about 50 wt% based on the total weight of the composition, and wherein a colored pigment is bonded to said bismuth oxychloride in said pearlescent component.

Claims 14, and 21 to 31 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite with respect to the recitation "shade-matching a pigment component to the benchmark shade to form a shade-matched pigment component". The Action sets forth that the aforementioned recitation is vague as it is

U.S. Application Serial No: 10/622,299
Amendment dated August 21, 2006
In response to Final Office Action dated June 19, 2006

not clear as to the method steps used to form a shade-matched pigment component and that it is not clear as to the shade of color with which the pigment is shade matched.

Applicants submit that all of the shade-matching steps of the method recited in claim 14 involve shade-matching to the same natural skin tone benchmark shade. Applicants have also amended claim 14, in part, as follows: "shade matching a pigment component to ~~the~~ said benchmark shade to form a shade-matched pigment component;" to further clarify antecedent basis.

On page 12, line 4 to page 13, line 14, Applicants describe the shade-matching the pearlescent component to a natural skin tone benchmark shade as follows:

"Shade matching of color cosmetic composition using pigments is known to those of ordinary skill in art of color cosmetics. In known shade matching, a shade of color (such as a skin color) is selected as a "benchmark" and ingredients (usually the pigment component) are added and/or adjusted to match the shade of the "benchmark". What the present invention has discovered is that when this known art of pigment shade-matching is also used to shade-match a separate pearlescent component to skin color, the resultant colored cosmetic mimics healthy skin's natural glow more accurately than any heretofore commercial colored cosmetic

U.S. Application Serial No: 10/622,299
Amendment dated August 21, 2006
In response to Final Office Action dated June 19, 2006

product. This is especially true for any known foundation cosmetics products.

A significant feature of the present invention is that the pearlescent component is matched to the desired natural skin tone (hereinafter "benchmark shade") rather than simply added as an accent to a shade-matched pigment component, as has been done in the prior art. The shade-matched pearlescent component may include any color-based pearls or any combinations thereof. The pearlescent component can be matched to the desired natural skin tone benchmark shade according to any known shade-matching method known in the art or by using the method noted above.

Preferably, the pearlescent component has a bismuth oxychloride based pearlescent ingredient or reflectance pearls. Bismuth oxychloride matches the skin's natural pearlescence more than compounds such as titanium oxide, which provide for a more artificial look. Bismuth oxychloride better mimics the skin's natural reflectance. However, other pearlescent ingredients may be used. A preferred pearlescent component is called CHROMA-LITE, which is a combination of colored pigment bonded to BI-LITE 20 (bismuth oxychloride and mica) using calcium stearate. The CHROMA-LITE component is available in various shades/color from Englehard Corporation (Iselin, New Jersey)."

Thus, shade-matching a pearlescent component to a natural skin tone benchmark shade to form a shade-matched pearlescent component is clearly described and is not at all indefinite.

Accordingly, the rejection of claim 14 under 35 U.S.C. 112, second paragraph, as being indefinite should be withdrawn and

U.S. Application Serial No: 10/622,299
Amendment dated August 21, 2006
In response to Final Office Action dated June 19, 2006

claims 14, and claims depending directly or indirectly therefrom,
should be allowed.

Claims 21 to 29 depend from claim 14, so they are allowable
for at least the same reasons as discussed above with respect to
claim 14.

Claims 30 to 31 have been canceled. Therefore, their
rejection is moot.

Claims 1, 5 to 12, 14, 21 to 28, and 30 to 31 have been
rejected under 35 U.S.C. 102(b) as being anticipated by Brieva et
al. (U.S. Patent No. 5,800,816).

The rejection of the canceled claims 30 to 31 is moot.

Claims 1 and 14 have been amended to include the features of
now-cancelled claims 31 and 30, respectively.

Brieva et al. does not teach or suggest the composition of
claim 1 or the method of claim 14.

U.S. Application Serial No: 10/622,299

Amendment dated August 21, 2006

In response to Final Office Action dated June 19, 2006

With respect to the rejection of claim 1, Applicants submit that Brieva et al. does not teach or suggest a composition for topical application to the skin comprising:

a pearlescent component having a bismuth oxychloride-containing pearlescent ingredient wherein the pearlescent component is matched to a natural skin tone benchmark shade;

a pigment component that is separately shade-matched to the benchmark shade; and

a cosmetic carrier;

wherein the pearlescent component and the pigment component form a blend present in an amount of about 0.01 wt% to about 50 wt% based on the total weight of the composition, and wherein a colored pigment is bonded to the bismuth oxychloride in the pearlescent component.

Further, Brieva et al. does not teach or suggest the steps of the method of claim 14, which defines a method for preparing a cosmetic composition for topical application to the skin. Brieva et al. does not teach or suggest the steps of:

U.S. Application Serial No: 10/622,299
Amendment dated August 21, 2006
In response to Final Office Action dated June 19, 2006

shade-matching a pearlescent component having a bismuth oxychloride-containing pearlescent ingredient to a natural skin tone benchmark shade to form a shade-matched pearlescent component;

shade-matching a pigment component to the benchmark shade to form a shade-matched pigment component;

blending the shade-matched pearlescent component and the shade-matched pigment component to form a shade-matched blend;
and

adding the shade-matched blend to a cosmetic carrier to form a cosmetic composition;

wherein the shade-matched blend is present in an amount of about 0.01 wt% to about 50 wt% based on the total weight of the composition, and wherein a colored pigment is bonded to the bismuth oxychloride in the pearlescent component.

Brieva et al. does not teach or suggest the method of claim 14 or the composition employed in the method of claim 14.

As set forth above, independent claims 1 and 14 both require the feature of a colored pigment that is bonded to bismuth

U.S. Application Serial No: 10/622,299
Amendment dated August 21, 2006
In response to Final Office Action dated June 19, 2006

oxychloride in the pearlescent component. Although Brieva et al. may arguably disclose a colored pigment and bismuth oxychloride, Brieva et al. does not teach or suggest that the colored pigment is bonded to the bismuth oxychloride in a pearlescent component. Rather, the colored pigment and the bismuth oxychloride are separate components in the Brieva et al. compositions.

Accordingly, the rejection of claims 1, 5 to 12, 14, and 21 to 28 under 35 U.S.C. 102(b) as being anticipated by Brieva et al. should be withdrawn and claims 1, 5 to 12, 14, and 21 to 28 and claims depending directly or indirectly therefrom should be allowed.

Claims 1, 5 to 10, 13, 14, 21 to 26, and 29 have been rejected under 35 U.S.C. 102(e) as being anticipated by Tan et al. (U.S. Patent No. 6,511,672).

Tan et al. does not teach or suggest the composition of claim 1 or the method of claim 14.

More specifically, Tan et al. does not teach or suggest a

U.S. Application Serial No: 10/622,299

Amendment dated August 21, 2006

In response to Final Office Action dated June 19, 2006

colored pigment that is bonded to bismuth oxychloride in a pearlescent component. Furthermore, claims 30 and 31 have not been rejected under Tan et al.

The feature of now-cancelled claim 31 has been incorporated into claim 1. Thus, Tan et al. does not teach or suggest a composition for topical application to the skin comprising:

a pearlescent component having a bismuth oxychloride-containing pearlescent ingredient wherein the pearlescent component is matched to a natural skin tone benchmark shade;

a pigment component that is separately shade-matched to the benchmark shade; and

a cosmetic carrier;

wherein the pearlescent component and the pigment component form a blend present in an amount of about 0.01 wt% to about 50 wt% based on the total weight of the composition, **and wherein a colored pigment is bonded to the bismuth oxychloride in the pearlescent component.**

The feature of now-cancelled claim 30 has been incorporated into claim 14. As such, Tan et al. does not teach or suggest the

U.S. Application Serial No: 10/622,299
Amendment dated August 21, 2006
In response to Final Office Action dated June 19, 2006

steps of the method of claim 14, which defines a method for preparing a cosmetic composition for topical application to the skin. Tan et al. does not teach or suggest the steps of:

shade-matching a pearlescent component having a bismuth oxychloride-containing pearlescent ingredient to a natural skin tone benchmark shade to form a shade-matched pearlescent component;

shade-matching a pigment component to the benchmark shade to form a shade-matched pigment component;

blending the shade-matched pearlescent component and the shade-matched pigment component to form a shade-matched blend;
and

adding the shade-matched blend to a cosmetic carrier to form a cosmetic composition;

wherein the shade-matched blend is present in an amount of about 0.01 wt% to about 50 wt% based on the total weight of the composition, and wherein a colored pigment is bonded to the bismuth oxychloride in the pearlescent component.

Thus, Tan et al. does not teach or suggest the method of

U.S. Application Serial No: 10/622,299
Amendment dated August 21, 2006
In response to Final Office Action dated June 19, 2006

claim 14 or the composition employed in the method of claim 14.

Claims 5 to 10, and 13 depend from claim 1. Claims 21 to 26, and 29 depend from claim 14. Consequently, these dependent claims are not anticipated by Tan et al. and are also patentably distinguishable for at least the same reasons as discussed above with respect to claims 1 and 14, respectively.

Accordingly, the rejection of claims 1, 5 to 10, 13, 14, 21 to 26, and 29 under 35 U.S.C. 102(e) as being anticipated by Tan et al. should be withdrawn and claims 1, 5 to 10, 13, 14, 21 to 26, and 29, and claims depending directly or indirectly therefrom should be allowed.

Claims 1, and 5 to 9 have been rejected under 35 U.S.C. 102(e) as being anticipated by Simon et al. (U.S. Patent No. 6,372,202).

Simon et al. does not teach or suggest the composition of claim 1 or the method of claim 14.

U.S. Application Serial No: 10/622,299
Amendment dated August 21, 2006
In response to Final Office Action dated June 19, 2006

More specifically, Simon et al. does not teach or suggest a colored pigment that is bonded to bismuth oxychloride in a pearlescent component. Furthermore, claims 30 and 31 have not been rejected under 35 U.S.C. § 102(e) as being anticipated by Simon et al.

The feature of now-cancelled claim 31 has been incorporated into claim 1. Simon et al. does not teach or suggest a composition for topical application to the skin comprising:

a pearlescent component having a bismuth oxychloride-containing pearlescent ingredient wherein the pearlescent component is matched to a natural skin tone benchmark shade;

a pigment component that is separately shade-matched to the benchmark shade; and

a cosmetic carrier;

wherein the pearlescent component and the pigment component form a blend present in an amount of about 0.01 wt% to about 50 wt% based on the total weight of the composition, **and wherein a colored pigment is bonded to the bismuth oxychloride in the pearlescent component.**

U.S. Application Serial No: 10/622,299
Amendment dated August 21, 2006
In response to Final Office Action dated June 19, 2006

The feature of now-cancelled claim 30 has been incorporated into claim 14. As such, Simon et al. does not teach or suggest the steps of the method of claim 14, which defines a method for preparing a cosmetic composition for topical application to the skin. Specifically, Simon et al. does not teach or suggest the steps of:

shade-matching a pearlescent component having a bismuth oxychloride-containing pearlescent ingredient to a natural skin tone benchmark shade to form a shade-matched pearlescent component;

shade-matching a pigment component to the benchmark shade to form a shade-matched pigment component;

blending the shade-matched pearlescent component and the shade-matched pigment component to form a shade-matched blend; and

adding the shade-matched blend to a cosmetic carrier to form a cosmetic composition;

wherein the shade-matched blend is present in an amount of about 0.01 wt% to about 50 wt% based on the total weight of the composition, and wherein a colored pigment is bonded to the

U.S. Application Serial No: 10/622,299
Amendment dated August 21, 2006
In response to Final Office Action dated June 19, 2006

bismuth oxychloride in the pearlescent component.

Thus, Simon et al. does not teach or suggest the method of claim 14 or the composition employed in the method of claim 14.

Claims 5 to 9 depend from claim 1. Consequently, these dependent claims are not anticipated by Simon et al. and are also patentably distinguishable for at least the same reasons as discussed above with respect to claim 1.

Accordingly, the rejection of claims 1, and 5 to 9 under 35 U.S.C. 102(e) as being anticipated by Simon et al. should be withdrawn and claims 1, and 5 to 9, and claims depending directly or indirectly therefrom should be allowed.

Applicants submit that none of the cited references teach or suggest a method or composition that includes a colored pigment which is bonded to bismuth oxychloride in the pearlescent component. Accordingly, claims 1 and 14 are allowable. As set forth above, dependent claims 5 to 13 depend from claim 1, and dependent claims 21 to 29 depend from claim 14. As such, these

U.S. Application Serial No: 10/622,299
Amendment dated August 21, 2006
In response to Final Office Action dated June 19, 2006

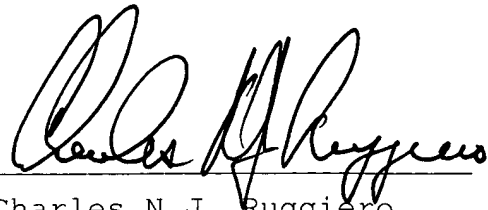
dependent claims are patentably distinguishable for at least the same reasons as discussed with regard to claims 1 and 14, respectively.

In view of the foregoing, Applicants respectfully request reconsideration of the currently pending claims and allowance of claims 1, 5 to 14, and 21 to 29.

Accordingly, the issuance of a Notice of Allowability is earnestly solicited.

Respectfully submitted,

Dated: August 21, 2006



Charles N.J. Ruggiero
Agent for Applicant(s)
Registration No. 28,468
Ohlandt, Greeley, Ruggiero
& Perle, L.L.P.
One Landmark Square, 10th Floor
Stamford CT 06901-2682
Tel: 203-327-4500
Fax: 203-327-6401